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NORFADILLA AHMAD SAIKIN v. CHAYED BASIRUN & ORS (NO 2)

HIGH COURT MALAYA, SHAH ALAM
AZIMAH OMAR JC
[ORIGINATING SUMMONS NO: 21-248-2010]
B 15 FEBRUARY 2016
[2016] CLJ JT(2)

CONTRACT: *Employment contract – Breach – Employee's employment as untrained trainee teacher retracted upon discovery of her pregnancy – Requests for*
C *reinstatement not entertained – Whether retraction of position lawful – Claim for compensation and damages*

CONSTITUTIONAL LAW: *Fundamental liberties – Deprivation – Deprivation of employment – Gender discrimination – Employee's employment as untrained*
D *trainee teacher retracted upon discovery of her pregnancy – Requests for reinstatement not entertained – Whether retraction of position lawful – Whether employee's constitutional rights infringed – Federal Constitution, art. 8(2)*

DAMAGES: *Quantum – General damages – Employee's employment as untrained trainee teacher retracted upon discovery of her pregnancy – Claim for breach of*
E *contract and gender discrimination – Award of RM300,000 – Whether employee entitled to damages – Whether amount appropriate and reasonable – Whether there were reasons, justifications or special circumstances to warrant granting of hefty amount*

The plaintiff attended an interview conducted by the Kementerian Pelajaran
F (defendants) for the position of Guru Sandaran Tak Terlatih ('GSTT') whereupon she was required to collect a placement notice and attend a briefing. During the briefing, the defendants discovered the plaintiff was pregnant, a fact which was not divulged earlier in the interview, and decided to retract her placement notice. Requests made by the plaintiff for
G reinstatement proved futile and this prompted her to commence an action for (i) a declaration that the retraction of the GSTT position by the defendants was unlawful and an infringement of the plaintiff's constitutional rights entrenched in art. 8(2) of the Federal Constitution; (ii) compensation; and (iii) damages. In addition to awarding compensation, the Deputy Registrar
H ('DR') also awarded the plaintiff general damages, namely (i) RM300,000 for breach of the plaintiff's constitutional rights; and (ii) RM25,000 for emotional and mental distress. Dissatisfied, the defendants appealed against the DR's decision contending that the plaintiff was only entitled to compensation and not general damages because her case was premised on a breach of contract.

I

Held (allowing appeal; reducing quantum of damages):

(1) Breach of contract could occur from an array of circumstances and could attract multiple causes of action which are not exclusive of each other.

The retraction of the placement notice was indeed a breach of contract. However, the rights deprived of the plaintiff were not only under the contract but also under the Federal Constitution. (para 6)

(2) In granting general damages, it is imperative for the courts to afford an explanation to justify the dire necessity to punish the act. The act, the manner of doing the act or the circumstances of the act, must be so pressing or serious enough that it moves the court to punish or make an example of the offender. There were no facts of any overtly outrageous conduct on the part of the defendants or that they had conducted themselves in such a deplorable manner as would have unnecessarily outraged the plaintiff. The only outrageous conduct prevalent was the breach of employment contract on the basis of gender discrimination. (paras 8 & 12)

(3) Despite the pursuit for fairness, the ends of justice must not allow for overcompensation or profiteering out of one party's conduct or misconduct. Compensation and/or damages must be reasonable and not excessive. The DR erred in his decision in granting the general damages for such a high sum. The DR did not furnish a single reason, justification or special circumstances for granting such a massive amount. Although gender discrimination is always abhorred and never condoned, the amount of general damages awarded was inappropriate (paras 7, 13 & 14)

(4) The plaintiff should have known that her pregnancy was an important piece of information to the defendants to consider her application. Circular No 1 of 2007 of the Perkhidmatan Kementerian Pelajaran Malaysia clearly made out that a GSTT position shall not allow for maternity leave. Although the circular does not explicitly spell out that pregnant women are not eligible for the position, the fact that it does not allow for maternity leave is sufficiently telling that pregnancy is indeed an issue. An earlier notice of pregnancy would have spared the plaintiff from suffering from the ordeal and supposed shame and mental anguish of being called out. The whole experience would greatly have been lessened if the plaintiff was honest about her pregnancy. (para 25)

(5) The plaintiff was deprived of employment. Therefore, her position and pay grade became an essential baseline in determining the quantum of damages. Considering the plaintiff's position as an untrained trainee teacher who had not served the country for many years, damages of RM300,000 would transcend from being vindictive or punitive to an outright profiteering to the plaintiff's benefit. The award for compensation remains but the general damages is reduced to RM30,000. (paras 20, 21, 29 & 31)

Case(s) referred to:

Beatrice Fernandez v. Sistem Penerbangan Malaysia & Anor [2005] 2 CLJ 713 FC ***(refd)***

Bekalan Sains P&C Sdn Bhd v Bank Bumiputera Malaysia Bhd [2011] 1 LNS 232 CA ***(refd)***

Lee Nyan Hon & Brothers Sdn Bhd v. Metro Charm Sdn Bhd [2009] 6 CLJ 626 CA ***(refd)***

Mamat Talib (Timbalan Ketua Polis, Johor) & Anor v. Abdul Jalil Rashid [2005] 4 CLJ 892 CA ***(refd)***

Noorfadilla Ahmad Saikin v. Chayed Basirun & Ors [2012] 1 CLJ 769 HC ***(refd)***

Rookes v. Barnard [1964] AC 1129 ***(refd)***

Yang Salbiah & Anor v. Jamil Harun [1981] 1 LNS 106 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 8(2)

Rules of Court 2012, O. 56

For the plaintiff - Honey Tan Lay Ean (Joachim Xavier with her); M/s Chooi & Co
For the defendants - Sahroni; SFC

Reported by Najib Tamby

JUDGMENT

Azimah Omar JC:

Brief Facts

[1] The present case is primarily a case for a claim of gender discrimination against women and also for a breach of contract. Two causes of action in which are not necessarily exclusive of each other. The issue left for determination in the present case is merely on the proper quantum of damages and compensation to be awarded to the plaintiff. The issue on liability has already been decided in favour of the plaintiff by the learned judge of the High Court, Zaleha Yusof J and has already been reported in *Noorfadilla Ahmad Saikin v. Chayed Basirun & Ors* [2012] 1 CLJ 769; [2012] 1 MLJ 832.

[2] Thus, there is no necessity for this court to immerse deeply into the facts in which has already been disposed by the High Court in the reported case above. Suffice for this court to keep in mind that the plaintiff was an applicant for a position as a Guru Sandaran Tak Terlatih ("GSTT"). The plaintiff was called for an interview, of which it entails she was called to collect a placement notice and attend a briefing. The plaintiff did not divulge her state of pregnancy to the interviewer and neither did the interviewer query the plaintiff of any pregnancy. The plaintiff attended the briefing to collect the placement notice and during the briefing, the attendees were asked to come forth if any of them were in the state of pregnancy. The plaintiff with two others came forth and consequently had their placement notices retracted. Over a course of time, the plaintiff exchanged correspondences requesting for a reinstatement, to which all was denied by the defendants. It is on these facts that the plaintiff filed an originating summons against the

defendants for a declaration that the defendants' decision to retract the GSTT position was unlawful and infringed her constitutional rights enumerated in art. 8(2) of the Federal Constitution and also claimed for compensation as well as damages.

[3] The parties contended on the appropriate quantum of damages before the learned Deputy Registrar ("DR"). The parties generally have agreed to compensation for wages, while the learned DR also awarded general damages. The following was awarded:

(i) RM12,907.68 as compensation for loss of income as GSTT for the term between 12 January 2009 to 29 June 2009, as agreed by the parties;

(ii) RM2,296.10 as compensation for loss of EPF contributions for the plaintiff for the term between 12 January 2009 to 29 June 2009, as agreed by the parties;

(iii) RM912.71 as compensation for loss of dividend on the EPF of the plaintiff for the term between 2009 to 2013, as agreed by the parties;

(iv) RM300,000 as damages for breach of the plaintiff's constitutional rights;

(v) RM25,000 as damages for emotional and mental distress; and

(vi) RM5,000 as costs payable by the defendants to the plaintiff.

[4] The defendants being dissatisfied with the damages awarded by the learned DR had filed a notice of appeal pursuant to O. 56 of the Rules of Court 2012 ("ROC") appealing against the DR's decision particularly in respect of the general damages assessed and awarded. This was clearly reflected in the defendants' notice of appeal (encl. 16) as follows:

> AMBIL PERHATIAN bahawa Defendan-Defendan yang dinamakan di atas bercadang untuk merayu terhadap sebahagian keputusan Timbalan Pendaftar yang diberikan pada 10 November 2014 yang membenarkan permohonan Plaintif untuk taksiran ganti rugi seperti berikut:
>
> (a) RM300,000.00 sebagai ganti rugi perlanggaran hak perlembagaan Plaintif;
>
> (b) RM25,000.00 sebagai ganti rugi tekanan emosi dan mental;
>
> (c) ….
>
> (d) RM5,000.00 sebagai kos.

[5] Before this court addresses the main issue of the present case, it is necessary for this court to preliminarily dispose of the defendants' contention that the plaintiff is not entitled to general damages merely on the ground that the plaintiff's case was for a breach of contract. It is the defendants' contention that since this was a case for breach of contract, the plaintiff is only entitled for compensation naturally flowing and foreseeable from the breach of contract.

[6] However, this court has no hesitation to dismiss this contention. Like many breaches of contract, the breach of a contract could occur from an array of circumstances. It could be purely failure of non-performance. Even negligence can be both a tort and also a breach of contract. What all of these circumstances show is that it is always possible that a breach of contract could attract multiple causes of action which are not mutually exclusive of each other. Similarly so, in the present case, indeed the retraction of the placement notice is a breach of contract, but what rights have been deprived is not only the plaintiff's rights in the contract, but also her rights entrenched in the Federal Constitution. Thus, it is justifiable that the plaintiff would be entitled to compensation and damages for both of these rights which were infringed.

Learned Deputy Registrar (DR) Never Furnished Any Reasons, Basis Or Grounds Underlying The General Damages For The Gender Discrimination

[7] At this juncture, it is verily clear to this court that the learned DR has erred in his decision in granting the general damages at such a high magnitude, and considering such high magnitude of general damages, the learned DR has not furnished a single reason, justification, any circumstances or special circumstances of the case, which would justify the granting of general damages at such a high magnitude. What was stated in the notes of proceeding when the DR handed down the award is simply this:

> Keputusan Mahkamah:
>
> Pihak-pihak Bersetuju Dgn Kiraan Pihak DF
>
> 7. RM12,907.68 = Kehilangan pendapatan sebagai guru sandaran tidak terlatih
> 8. RM2,296.10 = KWSP
> 9. RM912.71 = dividen KWSP
>
> Breach Of Constitutional Right
>
> 1. RM300K
>
> Pain Suffering
>
> 2. RM25,000.00
>
> Lain-lain tuntutan adalah ditolak kerana tidak dibuktikan.
>
> Mah: KOS RM5000

[8] In granting general damages (punitive, vindictive, exemplary or retributory), it is imperative for the courts to afford an explanation to justify the dire necessity to punish the act. The act, the manner of doing the act or the circumstances of the act must be so pressing or serious enough that it moves the court to punish or make an example of the offender. But such circumstance or facts were never explained at all by the learned DR.

[9] Abdul Malik Ishak JCA has correctly held in *Bekalan Sains P&C Sdn Bhd v Bank Bumiputera Malaysia Bhd* [2011] 1 LNS 232 that:

> The primary purpose of awarding damages is to compensate the aggrieved party for the harm done to him. Whereas the secondary purpose is to punish the wrongdoer and this is done by imposing what is known as exemplary damages or punitive damages or vindictive damages or retributory damages.

[10] The Court of Appeal has also held (in reference to the landmark case of *Rookes v. Barnard* [1964] AC 1129) in the case of *Lee Nyan Hon & Brothers Sdn Bhd v. Metro Charm Sdn Bhd* [2009] 6 CLJ 626 CA that:

> The purpose of **exemplary damages is to punish. And the quantum of exemplary damages may be influenced by the size of the compensation sought** even to the extent of exceeding the size of the compensation itself. In *Rookes v. Barnard* ... Lord Devlin observed that:
>
> > ... a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (**which may of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff**) is inadequate to punish him for **outrageous conduct**, to mark their disapproval of such conduct, and to deter him from repeating it, then it can award some larger sum.
>
> (emphasis added)

[11] Consequentially, this court does not find any outrageous facts or circumstances which necessitates the granting of punitive damages at such a massive amount.

[12] As far as relevant facts go, the present case is basically and primarily a case of breach of an employment contract brought forth on the basis of gender discrimination. There are no facts of any overtly outrageous conduct, in which the defendants have conducted themselves in a deplorable manner in which would have unnecessarily outraged the plaintiff. The plaintiff was offered an interview, then was called to collect a placement notice while attending a briefing at which time she admitted to being pregnant, then at the same time of her admission, the placement notice was retracted by the defendants. It entails that there were exchange of correspondences between the parties in which the defendants have denied the plaintiff's requests to be reinstated as a GSTT. In fact, even the whole ordeal of the plaintiff retrieving the placement notice was to an extent contributed by the plaintiff herself. This would be further discussed later in this judgment. As it stands, the only outrageous conduct prevalent in the present case is the breach of employment contract on the basis of gender discrimination. There were no other evidences of any other outrageous, high-handed, deplorable conduct besides the gender discrimination and breach of employment contract.

[13] However, it is verily important for this court to emphasise that this court does agree that general damages are appropriate to be granted in view of the gender discrimination faced by the plaintiff. It remains that gender

discrimination in any shape or form is never condoned and is always abhorred by this court. However, what this court finds inappropriate is the amount of general damages awarded by the learned DR with regards to the gender discrimination impressed upon the plaintiff.

General Damages To Not Allow Profiteering

[14] As prelude, this court must emphasise that this court does not downplay the importance of the preservation of human rights and acknowledges this court indeed carries the mantel as the people's guardian to fend off and condemn any oppression and/or discrimination. Verily in the present case, the plaintiff's basic human right has been infringed upon. But even in this court's pursuit for fairness, the ends of justice must not allow for over-compensation or profiteering out of one party's conduct or misconduct. Compensation and/or damages must be reasonable and not excessive given the circumstances of each case.

[15] What is laid upon this court in the present case is the balancing act between the granting of general damages (punitive, vindictive, exemplary or retributory) in marking the court's disdain and disapproval against gender discrimination, with other equally pertinent principles of granting damages in that damages must be fair and reasonable as well as damages cannot be excessive and unreasonable in that it becomes a conduit or instrument for profiteering.

[16] It has been vividly held by the Federal Court (which decision was delivered by the venerable late Raja Azlan Shah CJ (as His Highness then was)) in the case of *Yang Salbiah & Anor v. Jamil Harun* [1981] 1 LNS 106; [1981] 1 MLJ 292:

> It must be remembered that the purpose of damages is to try, so far as humanly possible, to put the victim back to the position he would have been in but for the accident. The damages must be fair, adequate and not excessive.

[17] The learned Gopal Sri Ram JCA (as he then was) in the case of *Mamat Talib (Timbalan Ketua Polis, Johor) & Anor v. Abdul Jalil Rashid* [2005] 4 CLJ 892 has also held that a claim for reinstatement of position of a public servant is already a remedy purposed to put the claimant in the same position as he would have been in if not for the dismissal, and the claimant's entitlement in that position would only be arrears in his salary as if the claimant has not been dismissed:

> There is one other point. The learned judge, apart from directing the assessment of emoluments, also directed damages to be assessed. That order is, with respect wrong. In the case of a public servant, an order of reinstatement at common law may be made. *That has the effect of putting a plaintiff in the same position as he would have been had he not been dismissed. So, he will get all his arrears of salary. But he is not entitled to damages in addition. That would be bad for double accounting*." (emphasis added)

[18] In the present case, in determining a fair and reasonable amount of general damages, it is pertinent that this court takes cognisance on the detriment and deprivation caused unto the complainant and also the surrounding facts culminating in the cause of action.

[19] This court is guided by the Court of Appeal's decisions in the abovementioned cases of *Bekalan Sains* and *Lee Nyan Hon*. It was stressed by the Court of Appeal that the primary purpose of awarding is to compensate the loss of the complainant and any award of general damages additional to the compensation may be "influenced by the size of the compensation sought". Thus, what the plaintiff was actually deprived of in the present case then becomes an important gauge, baseline or yardstick to ensure that the general damages do not become excessive and profits the plaintiff.

[20] The plaintiff's case against the defendant is of discrimination and deprivation. It is only fair and reasonable that in determining the appropriate amount of damages, be it punitive or otherwise, that this court ascertains exactly what has the plaintiff been deprived of or what detriment has she suffered. In the simplest essence, the complainant here has been deprived of employment. Thus, the position and pay grade of the complainant becomes an essential baseline in determining the quantum of damages appropriate. Considering the complainant's position as an untrained trainee teacher who has not yet served the country for many years, damages of RM300,000 go beyond being punitive, vindictive, exemplary or retributory and has transcended to be a thoroughly handsome profit to the benefit of the plaintiff. And this court shall not condone such profiteering or excessive damages and would only serve justice to the extent necessary to remedy the deprivation or detriment. Even if this court were to exercise its discretion to grant general damages, this court must consider this essential fact of the case. The general damages cannot extend so incredulously far from what the plaintiff has been deprived of. This court is minded that even if the plaintiff were to continue with the employment as she were, it would require tens of years of excellent service for the plaintiff to garner the sum of RM300,000. This court will not be a conduit to afford the plaintiff a shortcut to such massive sum of money.

[21] The plaintiff does not even have security of tenure for two months. A GSTT contract would only run on a month to month basis. Such high handed amount of general damages would transcend from being vindictive or punitive to being an outright profiteering to the plaintiff's benefit, profit of which is inappropriate for this court to award to the plaintiff.

[22] The gender discrimination against the plaintiff is indeed a ground for this court to award general damages (punitive, vindictive, exemplary or retributory) but definitely not to the quantum or amount which was awarded by the learned DR.

A **The Plaintiff's Own Aggravating Conduct**

[23] Furthermore, this court must also consider the adverse fact that that the plaintiff herself has not been completely honest and forward with the defendants of her position and/or condition of being pregnant. Although this fact does not negate the fact of the discriminatory conduct of the defendant, this court must also acknowledge the rights of the defendants to be furnished with full information and honesty from prospects or applicants to the position the defendant is offering. Considering the defendants have offered the position to the plaintiff, and the plaintiff was fully aware and conscious of the clear objectives of the position, it is only appropriate and fair that the plaintiff is equally honest with her condition to enter in employment. This court is minded that perhaps the knowledge of the pregnancy would equally result in the same discrimination against the plaintiff, but this court is equally minded that the issue would have surfaced at an earlier stage even before any added detriment or inconvenience could be lain upon both the plaintiff and the defendants (upon further and deeper engagement of the employment), had the plaintiff been honest with her position with the defendants.

[24] This court is minded that there were no enquiries made regarding the plaintiff's pregnancy during the interview for the GSTT position, and this has become one of the main contentions by the plaintiff to prove discrimination in the context that the state of pregnancy was not even an issue or consideration for the position. However, it is not necessarily so that if a question is not posed, that the issue is irrelevant. There is no such rule. This court is moved to look deeper into the discrimination and what both parties have done to culminate in the final detriment and deprivation suffered by the plaintiff. It is well known, particularly to the defendant being an untrained teacher that the pinnacle purpose of the GSTT program is to supplement the serious lack of teachers. Now, bearing that in mind, it is obviously clear that the capacity and the availability of the plaintiff to perform her duties (during this shortage of the teaching force) are gravely pertinent. It is important to the program that the hired persons are well available to perform their duties for the whole duration of the contract. Thus, the plaintiff having all these salient facts regarding the GSTT program in mind should have known that the information regarding her pregnancy would affect her availability to perform her duties and thus, should have known that the same information would be an important fact for the defendants to consider her application. Equally so, when this court takes cognisance of the fact that the defendants have indeed discriminated against the plaintiff, this court must also consider the fact that the plaintiff has knowingly acted to attempt to garner the benefit of employment which has a reduced requirement (as an untrained teacher) while having full knowledge that her pregnancy may hinder the purpose of the GSTT program that is to supplement the lack of teachers. This court cannot simply turn a blind eye to this conduct. The nation's education force was in dire need of supplements, and the plaintiff has come forth with promise of such supplement, while knowing she might not be able to commit

herself as this supplement. Thus, to an extent (while not negating the fact of discrimination against the plaintiff) the plaintiff has aggravated the detriment unto her own self, from her own conduct. And this is the exact aggravating factor in which the plaintiff contended in her further submissions for assessment of damages before the DR.

[25] Now, the fact that the plaintiff had to undergo the ordeal of attending the call for the placement notice, the briefing and finally being called out for being pregnant is to an extent the plaintiff's own doing. The plaintiff should have known that the fact of being pregnant is an important information for the defendants to consider her application as a GSTT during the interview. The Circular No. 1 of 2007 of the Perkhidmatan Kementerian Pelajaran Malaysia has clearly set out that a GSTT position shall not allow for maternity leave. Although the circular does not explicitly spell out that pregnant women are not eligible for the position, the fact that it does not allow for maternity leave is sufficiently telling that indeed pregnancy is an issue and the plaintiff should have been forward and honest about it and inform the same to the defendants. An earlier notice of such pregnancy would have spared the plaintiff from the same 'aggravating factor' which was contended in her further submission before the DR. The defendants might have denied application there and then, and it would entail that the plaintiff would not have to suffer the ordeal of having being told of the placement notice, attendance of the briefing and finally the supposed shame and mental anguish of having being called out in front of her peers. These aggravating factors are not the doing of the defendants alone. The plaintiff *vide* her own conduct has escalated the potency of the whole experience of gender discrimination. Needless to say, there would still be gender discrimination in both scenarios, but indeed, the whole experience would greatly be lessened if the plaintiff had just been honest about her pregnancy while having full knowledge that her pregnancy is indeed an important fact that should have been communicated to the defendants.

[26] Now, this court finds valuable guidance from the Federal Court decision in the case of *Beatrice Fernandez v. Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713; [2005] 3 MLJ 681 which is an eminent authority in the local chapter with regards to cases of discrimination against women for pregnancy. Preliminarily, this court must extrapolate the main principle derived from the Federal Court's decision in this case. It was held that art. 8(2) of the Federal Constitution can only apply in cases where discrimination occurs between the nation's executives, or its agencies and not discrimination between a private individual against another private individual. Now the present case squarely falls into the former circumstance between the executive or its agencies and a private individual, thus as correctly pointed out by the learned judge in the High Court case, the protection against discrimination applies in the present case. However, this

court must go further to apply the Federal Court's analysis on the facts considered in determining the discrimination against Beatrice, the applicant in that case. The Federal Court has observed the following:

> [14] We also observed that the job requirements of flight stewardesses are quite different from that of women in other occupations including the other categories of women employees in the same collective agreement. There are occupational benefits peculiar to the job which are not available in other occupations. Likewise, there are special conditions applicable peculiarly in this occupation, which the first respondent as the employer was entitled to impose.
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> *[15] It is not difficult to understand why airlines cannot have pregnant stewardesses working like other pregnant women employees. We take judicial notice that the nature of the job requires flight stewardesses to work long hours and often flying across different time zones. They have to do much walking on board flying aircraft. It is certainly not a conducive place for pregnant women to be* (emphasis added)

[27] Similarly so in the present case, it is only appropriate that this court echoes the same observations made by the Federal Court in *Beatrice*. It is altogether nothing wrong at all for this court to look at the purpose of the GSTT program and contrast the program with the plaintiff's own conduct to come to a fair and just conclusion with regards to the appropriate amount of general damages to be awarded to the plaintiff.

[28] Thus, it is this court's finding that although the plaintiff is entitled to general damages for the infringement of her constitutional rights, the massive amount which was assessed and awarded by the learned DR is clearly unjustifiable, excessive and allows profits to the plaintiff's benefit. This court shall not allow such excessive damages.

Court's Decision

[29] Thus, having in mind all of the above, this court hereby reverses the decision of the learned DR and orders that the general damages allowable to be reduced to the amount of RM30,000 for the deprivation of the plaintiff's constitutional rights, and all of the plaintiff's emotional and mental distress as well as hardships.

[30] This court hereby allows the defendants' appeal.

[31] The compensation for loss of wages as GSTT, EPF contributions and dividends as GSTT (which were agreed by the parties) shall remain and is upheld by this court.

On The Issue Of Costs

[32] Having heard the submission from learned counsels for the plaintiff and the defendants, this court hereby orders the plaintiff to pay the defendants a global sum of RM2,000 in costs.